

A new draft of a proposed rule to protect personal data identifiers in civil cases is being circulated. The new draft has several new provisions that will hopefully address earlier concerns. Please review the draft and send comments to Cathy Derden at [cderden@idcourts.net](mailto:cderden@idcourts.net).

1. A new exception has been added for documents that are required by statute to include personal data identifiers. This is in recognition that 42 USC § 666, entitled “requirement of statutorily prescribed procedure to improve effectiveness of child support enforcement”, requires recording of social security numbers in certain cases. In addition, the Uniform Interstate Family Support Act and I.C. § 7-1026 require personal information to be in the pleadings when a person seeks to establish or modify a support order or determine parentage, including residential addresses, social security numbers and dates of birth of each child.

2. One of the concerns expressed by the Department of Health and Welfare as it relates to family law cases is access to needed personal information if the reference list or unredacted version is sealed. Currently the family law case information sheet is not available to the parties in the action but this pursuant to a specific provision in ICAR 32. However, it should be noted that Rule 32 does provide that records that are otherwise exempt from disclosure are still accessible by the parties to the action and their attorneys, except for adoption records, records in proceedings to terminate parental rights, documents filed in camera and the family law case information sheet. Judges, clerks, trial court administrators and other staff employed by or working under the supervision of the courts who are acting within the scope of their duties have access to all documents that are exempt from disclosure pursuant to Rule 32. So even if the reference sheet or unredacted original is made exempt from disclosure, parties will have access to it as will court personnel.

Though Rule 32 gives the parties access to information that is closed to the public, the Department of Health and Welfare would still not be able to access these documents in cases where they are charged with enforcement but were not a party. To address this problem the reference list and redacted copy are referred to as “exempt from disclosure” as opposed to “sealed” as “sealed” gives the impression you need a court order for access. The new proposed rule also states that courts will share these with other government agencies as required or allowed by law without court order or application for purposes of the business of those agencies.

3. The previous draft of the rule did not address court orders. Although most orders or judgments do not need to include personal identifiers, there are some cases in which inclusion is necessary or even required by statute; for example, with regard to child support both I.C. §§ 32-706 and 32-710A state: “[t]he court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.” Another example that has been raised is orders on name changes for a minor and orders establishing paternity.

The new rule states that the court should refrain from using personal data identifiers except in cases where some or all of the personal data identifiers are required by statute or by the nature of the proceeding. It also states that if personal data identifiers are included in the order, the order shall be placed in a manila envelope marked “sealed” and be exempt from disclosure pursuant to Idaho Court Administrative Rule 32. Copies of the order will be served on the parties and be available to the parties and other government agencies without court order for purposes of the business of those agencies.

There is no need for the court to prepare a redacted copy unless there is a request that requires it.

4. The requirement that the reference list and unredacted copy be kept in a separate location was removed. Records exempt from disclosure are treated the same as sealed by the clerk’s office in that they are placed in a separate envelope marked sealed since it is easier than stamping “exempt from disclosure” and are removed from the file if anyone wants to look at the file. (Documents that are sealed by court order have a copy of the court order attached to the front of the envelope.) Clerks should be aware of pulling all sealed envelopes if a file is requested for viewing. However, this is an area that might benefit from clerk training.

### **10-1-10 DRAFT**

#### **PROPOSED Idaho Rule of Civil Procedure 3(c). Privacy protection for filings made with the court.**

(1) Redacted Filings. Unless the court orders otherwise, the parties shall refrain from including or shall partially redact, where inclusion is necessary, the following personal data identifiers from all documents filed with the court, including exhibits. This rule does not apply to exhibits offered at a trial or hearing unless they are filed with the court.

- (a) Social Security numbers. If an individual’s social security number must be included in a pleading, only the last three digits of that number shall be used.
- (b) Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child shall be used.
- (c) Dates of birth. If an individual’s date of birth must be included in a pleading, only the year shall be used.
- (d) Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers shall be used.

(e) Home addresses. Only the city and state shall be identified; however, this rule does not apply to information required to be in the caption of a pleading pursuant to Rule 10(a)(1) or in a certificate of service.

(2) Exceptions. (a) The redaction requirement does not apply to the record of a court, tribunal, administrative or agency proceeding if that record was filed before the effective date of this rule.

(b) The redaction requirement does not apply to documents that are exempt from disclosure pursuant to Idaho Court Administrative Rule 32.

(c) The redaction requirement does not apply to documents that are required by statute to include personal data identifiers.

(3) Options when personal data identifiers are necessary. A party filing a redacted document need not also file an unredacted version of the document; however, where inclusion of the unredacted personal data identifiers is necessary, a party may:

(a) File the redacted document together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information. The reference list shall be secured in the file and be exempt from disclosure pursuant to Idaho Court Administrative Rule 32; however, courts will share the reference list with other government agencies as required or allowed by law without court order or application for purposes of the business of those agencies.

(b) File the redacted document together with an unredacted copy of the document. The unredacted copy shall be placed in a manila envelope marked “sealed” with a general description of the records, and the redacted copy placed in the court file. The unredacted copy shall be exempt from disclosure pursuant to Idaho Court Administrative Rule 32; however, courts will share the unredacted copy with other government agencies as required or allowed by law without court order or application for purposes of the business of those agencies.

(4). Orders of the court. The court shall refrain from including in court orders the personal data identifiers set forth in subsections 1(a)(1) through 1(a)(5) of this rule, except in cases where some or all of the personal data identifiers are required by statute or by the nature of the proceeding. If personal data identifiers are included in the order, the order shall be placed in a manila envelope marked “sealed” and be exempt from disclosure pursuant to Idaho Court Administrative Rule 32. Copies of the order shall be served on the parties and shall be available to the parties and other government agencies without court order for purposes of the business of those agencies. Upon request a redacted copy shall be prepared.

(5) Responsibility for compliance. The parties and counsel are solely responsible for redacting personal data identifiers. The clerk will not review each document for compliance with the rule. Failure to comply with this rule is grounds for contempt.